

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

_____)	
UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 96A00086
)	
MAC SPECIALTIES LTD.,)	Judge Robert L. Barton, Jr.
Respondent.)	
_____)	

**ORDER REQUIRING FILING OF SETTLEMENT
AGREEMENT OR MOTION AND BRIEFS REGARDING
BANKRUPTCY AFFIRMATIVE DEFENSE**

(July 29, 1997)

By letter dated June 12, 1997, INS Assistant District Counsel Soni Sinha, counsel for Complainant in this case, informed the Court that the parties had reached a settlement and soon would submit a motion to dismiss, a proposed settlement agreement, and a proposed order of dismissal. To date, the parties have not submitted those documents.

My legal technician spoke with Ms. Sinha on July 17, 1997, to check the status of the settlement agreement. Ms. Sinha informed my legal technician that she had not heard from Respondent's counsel, Mark Morgenstern, Esq., since she had mailed the settlement papers to him. Ms. Sinha added that she had attempted to contact Mr. Morgenstern the previous week, but that he had not returned her telephone call. Ms. Sinha called my office on July 23 to report that she had tried to reach Mr. Morgenstern again by telephone, but that, again, he had not returned her call.

My legal technician has made repeated attempts since July 23 to reach Mr. Morgenstern, but each time she has called Mr. Morgenstern's given telephone number, a voice mail message has greeted her; no live person has answered the telephone. My legal technician left messages on Mr. Morgenstern's voice mail on July 23 and July 28, and on July 29, he called my office to report that the settlement agreement had been forwarded to the client for review and signature. Given that this office was informed over a month ago that the case has been settled, the parties must submit a signed settlement agreement, with other appropriate papers, by August 22, 1997. If the parties do not proceed with a settlement, then Respondent must file, by that same date, the motion and brief

described in the Order Regarding Respondent's First Affirmative Defense, issued March 11, 1997.¹ Respondent's brief shall address all the points for which briefing was requested in that Order. In addition to addressing the issues specifically raised in that Order, Respondent shall discuss in its brief any other issues, arguments and authorities that are relevant to the disposition of the question of whether Respondent's bankruptcy bars the present cause of action. If the parties do not proceed with a settlement and Respondent, instead, submits its motion and brief, Complainant's response brief will be due September 17, 1997. Complainant's response brief also will address the issues raised in my March 11 Order, as well as any other issues, arguments and authorities that are relevant to the question of the effect of Respondent's bankruptcy on the present proceeding.

Both parties' briefs should follow the format outlined in my Order Governing Prehearing Procedures, issued March 25, 1997. Specifically, a motion regarding the bankruptcy defense shall be supported by a double spaced, paginated legal brief, which shall contain a table of contents and a table of citations. If any exhibits are attached in support of the memorandum, they shall be clearly marked and paginated, and, if there are more than two exhibits, an index listing the exhibits by description or title and exhibit number shall be provided.

If the parties do not submit a signed settlement agreement to my office by August 22, and Respondent, in the alternative, fails to file its motion and brief by that date, Respondent will be deemed to have abandoned its bankruptcy defense. Further, the Rules of Practice authorize me to consider a failure to comply with an order as an abandonment of a request for hearing. See 28 C.F.R. § 68.37(b) (1996).

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

¹ I remind the parties that "filed" means that the specified documents must be received in my office by the given date, not just that they must be postmarked by that date.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 1997, I have served the foregoing Order Requiring Filing of Settlement Agreement or Motion and Briefs Regarding Bankruptcy Affirmative Defense on the following persons at the addresses indicated, by first class mail, unless otherwise noted:

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